

SENATE BILL NO. 17

INTRODUCED BY G. PERRY

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROVISIONS IN LOCAL SUBDIVISION REGULATIONS THAT REQUIRE A PUBLIC WATER SUPPLY SYSTEM AND A PUBLIC SEWER SYSTEM IN CERTAIN SUBDIVISIONS; PROVIDING A PROCESS FOR ALTERNATIVES TO THE REQUIRED PUBLIC WATER SUPPLY SYSTEM AND PUBLIC SEWER SYSTEM; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, AND 76-3-622, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage; and

~~(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:~~

~~——— (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and~~

~~——— (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and~~

~~(iv)~~(iii) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical

1 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
2 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
3 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
4 lots;

5 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
6 and inspection of the ditch; and

7 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
8 easement without the written permission of the ditch owner.

9 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

10 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
11 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
12 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
13 or

14 (B) the water rights are removed or the process has been initiated to remove the water rights from the
15 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
16 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
17 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
18 document that intent, when applicable, in agreements and legal documents for related sales transactions.

19 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
20 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
21 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
22 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
23 historic and legal rights;

24 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
25 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
26 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
27 services within the subdivision.

28 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
29 hearings;

30 (o) establish procedures describing how the governing body or its agent or agency will address

1 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

2 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
3 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
4 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
5 the reviewing authority is not the governing body.

6 (q) establish a preapplication process that:

7 (i) requires a subdivider to meet with the agent or agency, other than the governing body, that is
8 designated by the governing body to review subdivision applications prior to the subdivider submitting the
9 application;

10 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
11 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

12 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
13 state, and federal government, and any other entities that may be contacted for comment on the subdivision
14 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
15 the review of the application, the agent or agency designated by the governing body contacts a public utility,
16 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
17 agency shall notify the subdivider of the contact and the timeframe for response.

18 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent
19 or agency receives a written request for a preapplication meeting from the subdivider; and

20 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
21 provided in 76-3-604.

22 (2) (a) The subdivision regulations adopted under this chapter must prescribe standards for water supply
23 and sewage and solid waste disposal.

24 (b) Except as provided in subsection (2)(c), the standards must, at a minimum, meet the:

25 (i) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
26 will create one or more parcels containing less than 20 acres; and

27 (ii) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
28 containing 20 acres or more and less than 160 acres.

29 (c) When a residential subdivision creates 30 or more lots with an average lot size of less than 3 acres,
30 the standards must require the subdivider to:

1 (i) install a public water system and a public sewer system that meet the regulations adopted by the
2 department of environmental quality under 76-4-104; or

3 (ii) seek approval from the local governing body to install an alternative to a public water system and
4 public sewer system. The local governing body shall hold a public hearing on the proposal based on the
5 information provided pursuant to 76-3-622 (4).

6 (d) The provisions of 76-3-511 apply to subsection (2)(b) of this section but do not apply to subsection
7 (2)(c).

8 (2)(3) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
9 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
10 development.

11 (3)(4) The governing body may establish deadlines for submittal of subdivision applications."
12

13 **Section 2.** Section 76-3-511, MCA, is amended to read:

14 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as
15 provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a
16 regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(2)(b) that is more stringent than the comparable state
17 regulations or guidelines that address the same circumstances. The governing body may incorporate by reference
18 comparable state regulations or guidelines.

19 (2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~
20 76-3-504(2)(b) that is more stringent than comparable state regulations or guidelines only if the governing body
21 makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

22 (a) the proposed local standard or requirement protects public health or the environment; and

23 (b) the local standard or requirement to be imposed can mitigate harm to the public health or
24 environment and is achievable under current technology.

25 (3) The written finding must reference information and peer-reviewed scientific studies contained in the
26 record that forms the basis for the governing body's conclusion. The written finding must also include information
27 from the hearing record regarding the costs to the regulated community that are directly attributable to the
28 proposed local standard or requirement.

29 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before
30 April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may

petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation."

Section 3. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of application and preliminary plat for review -- water and sanitation information required. (1) Subject to the submittal deadlines established as provided in ~~76-3-504(3)~~ 76-3-504(4), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body

1 of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of
2 hearings, reports, and other requirements whenever possible.

3 (3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the
4 authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

5
6 **Section 4.** Section 76-3-604, MCA, is amended to read:

7 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**
8 **information.** (1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with
9 any deadlines established pursuant to ~~76-3-504(3)~~ 76-3-504(4) and receipt of the review fee submitted as
10 provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the
11 listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written
12 permission, the subdivider's agent of the reviewing agent's or agency's determination.

13 (b) If the reviewing agent or agency determines that elements are missing from the application, the
14 reviewing agent or agency shall identify those elements in the notification.

15 (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the
16 subdivider's agent that the application contains all of the required elements as provided in subsection (1), the
17 reviewing agent or agency shall determine whether the application and required elements contain detailed,
18 supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions
19 of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with
20 the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

21 (b) If the reviewing agent or agency determines that information in the application is not sufficient to allow
22 for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information
23 in its notification.

24 (c) A determination that an application contains sufficient information for review as provided in this
25 subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the
26 governing body and does not limit the ability of the reviewing agent or agency or the governing body to request
27 additional information during the review process.

28 (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

29 (a) a determination is made that the application contains the required elements and sufficient information;
30 and

1 (b) the subdivider or the subdivider's agent is notified.

2 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an
3 application contains sufficient information as provided in subsection (2), the governing body shall approve,
4 conditionally approve, or deny the proposed subdivision within 60 working days, based on its determination of
5 whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant
6 to this chapter, unless:

7 (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review
8 period, not to exceed 1 year; or

9 (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

10 (5) If the governing body denies or conditionally approves the proposed subdivision, it shall send the
11 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

12 (6) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding
13 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the
14 comments submitted available to the subdivider within 30 days after conditional approval or approval of the
15 subdivision application and preliminary plat.

16 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the
17 comments or the summary provided by the governing body to the:

18 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more
19 parcels containing less than 20 acres; and

20 (ii) local health department or board of health for proposed subdivisions that will create one or more
21 parcels containing 20 acres or more and less than 160 acres.

22 (7) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,
23 the governing body may require approval by the department of environmental quality as a condition of approval
24 of the final plat.

25 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the
26 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622,
27 that there is an adequate water source and at least one area for a septic system and a replacement drainfield
28 for each lot.

29 (8) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter
30 may occur only under those regulations in effect at the time a subdivision application is determined to contain

1 sufficient information for review as provided in subsection (2).

2 (b) If regulations change during the review periods provided in subsections (1) and (2), the determination
3 of whether the application contains the required elements and sufficient information must be based on the new
4 regulations."

5
6 **Section 5.** Section 76-3-622, MCA, is amended to read:

7 **"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as provided
8 in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the
9 governing body the information listed in this section for proposed subdivisions that will include new water supply
10 or wastewater facilities. The information must include:

11 (a) a vicinity map or plan that shows:

12 (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed
13 lots, of:

14 (A) flood plains;

15 (B) surface water features;

16 (C) springs;

17 (D) irrigation ditches;

18 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
19 wastewater treatment systems;

20 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

21 (G) the representative drainfield site used for the soil profile description as required under subsection
22 (1)(d); and

23 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and
24 sewer facilities;

25 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste
26 disposal systems, and wastewater treatment systems, including whether the water supply and wastewater
27 treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published
28 by the department of environmental quality;

29 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows
30 all information required for a lot layout document in rules adopted by the department of environmental quality

1 pursuant to 76-4-104;

2 (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

3 (i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided
4 in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

5 (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between
6 the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

7 (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the
8 natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance
9 provided in subsection (1)(d)(ii);

10 (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

11 (i) obtained from well logs or testing of onsite or nearby wells;

12 (ii) obtained from information contained in published hydrogeological reports; or

13 (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to
14 76-4-104;

15 (f) evidence of sufficient water quality in accordance with rules adopted by the department of
16 environmental quality pursuant to 76-4-104;

17 (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment
18 systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and
19 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant
20 changes in water quality. The preliminary analysis may be based on currently available information and must
21 consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within
22 and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this
23 subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is
24 required for an application that is reviewed under Title 76, chapter 4.

25 (2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit
26 the information required in this section.

27 (3) ~~A~~ Except as provided in subsection (4), a governing body may not, through adoption of regulations,
28 require water and sanitation information in addition to the information required under this section unless the
29 governing body complies with the procedures provided in 76-3-511.

30 (4) A subdivider who proposes an alternative to the public water system and public sewer system

1 required by 76-3-504(2)(c) shall provide:

2 (a) information that shows by a preponderance of the evidence that the proposed alternative protects
3 public health and the environment;

4 (b) information that shows by a preponderance of the evidence that the proposed alternative can mitigate
5 harm to public health and the environment and is achievable under current technology;

6 (c) evidence that the conclusions asserted in subsections (4)(a) and (4)(b) are supported by
7 peer-reviewed scientific studies; and

8 (d) a comparison of the costs to the regulated community that are directly attributable to the requirement
9 for a public water system and a public sewer system versus the costs for the proposed alternative."

10 - END -